AO 243 (Rev. 2/95)

PETITION UNDER 28 USC § 2255 TO VACATE, SET ASIDE, OR CORRECT SENTENCE BY A PERSON IN FEDERAL CUSTODY

UNITED STATES DISTRICT COURT	District: Southern District of New York	
Name of Movant: Robert Faiella	Prisoner No.: 09829-049	Case No.: 1:14cr243-01(JSR)
Place of Confinement: Satellite Prison Camp - Edgefield		

UNITED STATES OF AMERICA v. Robert Faiella

(name under which convicted)

MOTION

15CV 6511

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1. Name and location of court which entered the judgment of conviction under attack United States District Court Southern District of New York

2. Date of judgment of conviction October 13, 2013

3. Length of sentence 48 months

4. Nature of offense involved (all counts) 18 U.S.C. §1960(b)(1)(B)

5. What was your plea? (Check one)
   (a) Not guilty ☐
   (b) Guilty ☒
   (c) Nolo contendere ☐

   If you entered a guilty plea to one count or indictment, and not a guilty plea to another count or indictment, give details:

6. If you pleaded not guilty, what kind of trial did you have? (Check one)
   (a) Jury ☐
   (b) Judge only ☐

7. Did you testify at the trial?
   Yes ☐ No ☐

8. Did you appeal from the judgment of conviction?
   Yes ☐ No ☒

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9. If you did appeal, answer the following:

(a) Name of court ______________________

(b) Result ______________________

(c) Date of result ______________________

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any federal court?

Yes ☐ No ☒

11. If your answer to 10 was "yes," give the following information:

(a) (1) Name of court ______________________

(2) Nature of proceeding ______________________

(3) Grounds raised ______________________

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes ☐ No ☒

(5) Result ______________________

(6) Date of result ______________________

(b) As to any second petition, application or motion give the same information:

(1) Name of court ______________________

(2) Nature of proceeding ______________________

(3) Grounds raised ______________________

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(4) Did you receive an evidentiary hearing on your petition, application or motion?
Yes ☐ No ☐

(5) Result ______

(6) Date of result ______

(c) Did you appeal, to an appellate federal court having jurisdiction, the result of action taken on any petition, application or motion?
(1) First petition, etc. Yes ☐ No ☐
(2) Second petition, etc. Yes ☐ No ☐

(d) If you did *not* appeal from the adverse action on any petition, application or motion, explain briefly why you did not:

______

12. State *concisely* every ground on which you claim that you are being held in violation of the constitution, laws or treaties of the United States. Summarize *briefly* the *facts* supporting each ground. If necessary, you may attach pages stating additional grounds and *facts* supporting the same.

Caution: If you fail to set forth all grounds in this motion, you may be barred from presenting additional grounds at a later date.

For your information, the following is a list of the most frequently raised grounds for relief in these proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you may have other than those listed. However, you should raise in this motion all available grounds (relating to this conviction) on which you base your allegations that you are being held in custody unlawfully.

Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. The motion will be returned to you if you merely check (a) through (j) or any one of the grounds.

(a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily or with understanding of the nature of the charge and the consequences of the plea.

(b) Conviction obtained by use of coerced confession.

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(c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
(d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
(e) Conviction obtained by a violation of the privilege against self-incrimination.
(f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
(g) Conviction obtained by a violation of the protection against double jeopardy.
(h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.
(i) Denial of effective assistance of counsel.
(h) Denial of right of appeal.

A. Ground one: ineffective assistance of counsel

Supporting FACTS (state *briefly* without citing cases or law)

B. Ground two: denied due process prights

Supporting FACTS (state *briefly* without citing cases or law)

C. Ground three:

Supporting FACTS (state *briefly* without citing cases or law)

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D. Ground four: ______

Supporting FACTS (state *briefly* without citing cases or law) ______

13. If any of the grounds listed in 12A, B, C, and D were not previously presented, state *briefly* what grounds were not so presented, and give your reasons for not presenting them: ______

14. Do you have any petition or appeal now pending in any court as to the judgment under attack?

Yes ☐ No ☒

15. Give the name and address, if known, of each attorney who represented you in the following stages of judgment attacked herein:

(a) At preliminary hearing ______

(b) At arraignment and plea ______

(c) At trial ______

(d) At sentencing ______

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(e) On appeal ______

(f) In any post-conviction proceeding ______

(g) On appeal from any adverse ruling in a post-conviction proceeding ______

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at approximately the same time?
Yes ☐ No ☒

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?
Yes ☐ No ☒

(a) If so, give name and location of court which imposed sentence to be served in the future: ______

(b) Give date and length of the above sentence: ______

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?
Yes ☐ No ☒

Wherefore, movant prays that the Court grant petitioner relief to which he or she may be entitled in this proceeding.

______
Signature of Attorney (if any)

I declare under penalty of perjury that the foregoing is true and correct. Executed on

7/31/15
(Date)

[signature]
Signature of Movant

United States District Court
for the Southern District of New York

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United States of America v. Robert Faiella, Defendant	Case No.: 1:14cr243-01(JSR) Motion to Vacate, Set Aisde, or Correct Defendant's Sentence Pursuant to 28 U.S.C. §2255

Defendant, Robert Faiella, respectfully submits this Motion to Vacate, Set Aside or Correct his Sentence pursuant to 28 U.S.C. §2255.

Procedural History

On January 20, 2015, Robert Faiella pled guilty to a violation of 18 U.S.C. §1960(b)(1)(B). Faiella was sentenced by the Court to a term of 48 months imprisonment. He now serves his sentence at the Satellite Prison Camp Edgefield, in Edgefield, South Carolina.

Factual Summary

Prior to 2015, Faiella operated a business wherein he exchanged money from his customers in return for "bitcoins", a commonly known internet currency. Faiella's customers typically emailed him to arrange the transaction and Faiella completed the transaction in the same manner. Although Faiella believed he did not have to register or license his business, it was determined, and Faiella agreed, that his work did qualify as a "money transmitting business" under federal law. Faiella pled guilty to this crime and sought to be sentenced under the applicable guideline.

Legal Argument

Faiella moves before this Court for an order correcting or reducing his sentence on the ground that he received the ineffective assistance of counsel, which resulted in a longer sentence than he should have received.

The Sixth Amendment to the Constitution guarantees the effective assistance of counsel to those charged with crimes. To prevail on a claim for ineffective assistance of counsel a moving party must show that (1) his attorney's representation fell below an objective standard of reasonableness; and (2) due to counsel's errors, the defendant was prejudiced. Strickland v. Washington, 466 U.S. 668 (1984). Prejudice occurs when an error results in a longer sentence than would otherwise have been imposed. Glover v. United States, 531 U.S. 198 (2001).

Faiella's counsel breached the reasonable standard when he failed to ensure that Faiella was sentenced under the proper guideline. Such failure prejudiced Faiella because he received a longer sentence than he should have.

Faiella pled guilty to a violation of 18 U.S.C. §1960(b)(1)(B). When a Court is faced with a criminal defendant who has been convicted it is to recommend a sentence as required by 18 U.S.C. §3553(a)(4) and the United States Sentencing Guidelines. The first step that the sentencing court is to take is set out in U.S.S.G. §1B1.1, which states: "The court shall determine . . . the offense guideline section from Chapter Two (Offense Conduct) applicable to the offense of conviction." See §1b1.1(a)(1). Because this first step determines the base offense level and the ultimate sentence, getting this fact correct is vital to the sentencing process; in fact, doing this incorrectly is a procedural error. The right to due process requires that a defendant be sentenced upon true information. Torres v. United States, 140 F.3d 392 (2nd Cir. 1998).

Faiella was sentenced under the wrong guideline, which led to a much higher sentence. Based on his conviction Faiella should have been sentenced under §2S1.3 and not §2S1.1 as the Court chose. (Compare Commentary, Statutory Provisions from §2S1.1 and §2S1.3.) Though the Court departed from the range in the Guideline, the departure should have been from a much lower starting point. Had this been done properly Faiella would have received a sentence less than half as long as the one he received.

Faiella's counsel breached his duty of reasonable representation when he did not object to the improper application of §2S1.1 to Faiella. The application of the incorrect guideline to Faiella resulted in a much higher sentence than Faiella would have received, prejudicing him. As a result, both prongs of the Strickland test have been satisfied.

Applying the appropriate guideline to Faiella's conviction would have resulted in a guideline range of 24 to 30 months due to an offense level of 17 (base level of 6, plus 14 for the value of the funds, less 3 levels for assuming responsibility in a timely manner). As it was, the Court was presented with an offense level of 25 and a guideline range of 57 to 71 months. Faiella submits that if the Court were faced with a lower guideline range it would likely have granted a reduction below that range.

Conclusion

For the reasons stated above, Faiella submits that he is entitled to an order of this Court vacating his sentence so that he can be sentenced under the appropriate guideline. When that re-sentence is performed Faiella asks that the Court consider his severe back disability and his need for spinal surgery, which are well documented in the Court's records, and either reduce his sentence to time-served or order any further incarceration to take place on home confinement.

Respectfully submitted,

Robert Faiella

July 31, 2015

July 31, 2015

Robert Faiella
Federal Prison Camp
P.O. Box 725
Edgefield, SC 29824

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Clerk of Court
United States Courthouse
500 Pearl St
New York, NY 1007-1312

Re: Motion Filing
Case No.: 1:14cr243-01(JSR)

Dear sir or Madam:

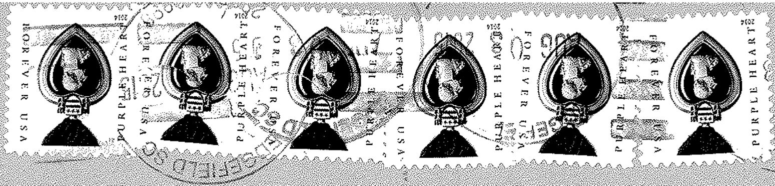
I am enclosing my original §2255 Motion for filing in this Court.

If you need anything from me contact me at the address above.

Regards,

Robert Faiella

⇔09829-049⇔
Robert Faiella
Edgefield Prison Camp
501 GARY HILL RD
POB 725
Edgefield, SC 29824-0725
United States



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